

REMARKS**Claim Status**

Claims 1, 4-9, 11-14, 17-21, 23-25, 28-31, and 33-36 are pending in the application. New claim 36 has been added. Claims 1, 9, 14, 21, 25, 31, 35, and 36 are the independent claims of the application.

Art Rejections

In the Office Action, claims 1, 4-8, 11-14, 17-20, 23-25, 28-30, 33, and 35 were rejected under 35 U.S.C. §103(a) as being unpatentable over Boonie *et al.*, U.S. Patent Number 6,658,513 (“Boonie” hereinafter) in view of Bamford *et al.*, U.S. Patent Number 5,873,098 (“Bamford” hereinafter). Claims 9, 21, and 31 were rejected under 35 U.S.C. §103(a) as being unpatentable over Boonie in view of Bamford and in further view of Raz *et al.*, U.S. Patent Number 5,852,715 (“Raz” hereinafter). Claim 34 was rejected under the same statute as being unpatentable over Boonie in view of Bamford and in further view of Pothapapragada *et al.*, U.S. Patent Number 6,442,682 (“Pothapapragada” hereinafter). We respectfully traverse these rejections and request reconsideration.

In rejecting independent claims 1, 14, 25, and 35, the Office Action states that “Bamford discloses the use of snapshots . . . in mirroring the data,” citing Bamford at column 4, line 41, through column 5, line 43. We believe that the cited text of Bamford does not describe “snapshots” as defined in the instant application.

The term “snapshot” is expressly defined in patent application serial number 09/127,497, attorney docket number NAP-013, a disclosure that has been incorporated in the instant application.

The definition reads as follows: “As used herein, a ‘snapshot’ is a set of storage blocks, the member storage blocks forming a consistent file system, disposed using a data structure that allows for efficient set management.” Pat. App. Ser. No. 09/127,497, page 11, lines 1-3. The term “consistent” is also defined in the same document:

As used herein, the term “consistent,” referring to a file system (or to storage blocks in a file system), means a set of storage blocks for that file system that includes all blocks required for the data and file structure of that file system. Thus, a consistent file system stands on its own and can be used to identify a state of the file system at some point in time that is both complete and self-consistent.

Pat. App. Ser. No. 09/127,497, page 10, lines 5-9.

The instant application incorporates by reference the disclosure of the ‘497 application. Application, page 8, last paragraph, and page 9, second paragraph. “The information incorporated is as much a part of the application as filed as if the text was repeated in the application, and should be treated as part of the text of the application as filed.” MANUAL OF PATENT EXAMINING PROCEDURE §2163.07(b) (8th ed., rev. 1, Feb. 2003). (Sections of the Manual will be cited as “MPEP §____” hereinafter.) The definition of a snapshot given in the ‘497 application is therefore part of the instant application.

Bamford also uses the word “snapshot,” but in a sense different from that conveyed by the above definition of that term. According to Bamford,

First, every statement executed by a Consistent Read Mode transaction sees only (1) changes that were committed to the database by a particular set of committed transactions and (2) changes made by prior statements of the transaction itself. This set of transactions whose changes are visible to a statement is referred to as its

"snapshot set". This isolates transactions that are issuing reads from the changes made by excluded transactions that are concurrently issuing writes.

A Consistent Read Mode transaction requires that statements see "snapshots" of the database. A statement's snapshot includes all changes made by the transactions in its snapshot set, and none of the changes made by any transactions that are not in its snapshot set ("excluded transactions").

Bamford, column 4, lines 24-46. Thus, Bamford's snapshot apparently does not include file structure of a file system. Bamford's snapshot also apparently excludes certain changes made to the database by the so-called "excluded transactions." In contrast, a snapshot according to the instant application "is a set of storage blocks, the member storage blocks forming a consistent file system." Consistency, in turn, necessitates inclusion of "all blocks required for the data and file structure of that file system."

The term "snapshot" is associated with different concepts in the instant application and in Bamford. It is well established that an applicant can be his or her own lexicographer. MPEP §2173.05(a). "When the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art." *Id.* (citing *In re Zletz*, 893 F.2d 319 (Fed. Cir. 1989)). In the present application, the meaning of "snapshot" has been defined (through incorporation by reference). The meaning differs from the meaning of the same word in Bamford. When the claims are construed using the definition of "snapshot" given in the application, the claims' snapshot limitation is not disclosed by Bamford.

Each of the independent claims 9, 21, and 31 includes a limitation of “wherein snapshots are used in mirroring the data.” As discussed above, Bamford does not disclose “snapshots” as used in the application. Therefore, claims 9, 21, and 31 are patentable over the references of record.

In the above discussion, we have addressed patentability of all pending independent claims. As regards dependent claims not specifically discussed, these claims are patentable together with their base claims and intervening claims, if any.

New claim 36 is believed to be patentable because the references do not teach or suggest the combination of steps as recited in this claim.


CONCLUSION

For the foregoing reasons, Applicant respectfully submits that all pending claims are patentable over Boonie, Bamford, Raz, and Pothapapragada. To discuss any matter pertaining to the present application, the Examiner is invited to call the undersigned attorney at (858) 720-9431.

Having made an effort to bring the application in condition for allowance, a timely notice to this effect is earnestly solicited.

Respectfully submitted,

Dated: July 8, 2004


Anatoly S. Weiser
Reg. No. 43,229

The Swernofsky Law Group
P.O. Box 390013
Mountain View, CA 94039-0013
(650) 947-0700